

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 05-CI-00459

COMMONWEALTH OF KENTUCKY,
OFFICE OF THE ATTORNEY GENERAL
Ex rel. Gregory D. Stumbo in his official
Capacity as Attorney General of the
Commonwealth of Kentucky

PETITIONER

v. **MOTION FOR SUMMARY JUDGMENT**

BOARD OF DIRECTORS FOR THE
COMMONWEALTH POSTSECONDARY
EDUCATION PREPAID TUITION
TRUST FUND, et al.

RESPONDENTS

* * * * *

Comes the Petitioner, Gregory D. Stumbo, in his capacity as Attorney General,
and moves the Court pursuant to CR 56.01 for Summary Judgment in his favor granting a
binding declaration of rights and enjoining the Respondents, the Board of Directors for
the Commonwealth Post Secondary Education Trust Fund, the Kentucky Higher
Education Assistance Authority, and Cabinet for Finance and Administration *ex rel.*
Robbie Rudolph in his official capacity as Secretary of the Kentucky Finance
Administration Cabinet and all officers, agents, employees, members and any person in
concert with them as follows:

A. That assets held in the “Commonwealth postsecondary prepaid
tuition trust fund” are private funds which may not be appropriated by the General
Assembly and placed into the General Fund.

B. That assets transferred into the “Commonwealth postsecondary
prepaid tuition trust fund” by lawful order of the KAPT Board on December 1, 2004 are

private funds both because the citizens who purchased KAPT contracts became vested with a private property interest in those funds at that time, and because the transfer commingled the previously public funds with private funds held by the trust.

C. That the taking of assets from the KAPT fund will create an unfunded liability which substantially impairs the KAPT contracts which the Commonwealth has entered into with thousands of its citizens.

D. That repealing KRS 393.015 and prohibiting transfers from the abandoned property fund to the KAPT Fund substantially impairs of the KAPT contracts which the Commonwealth has entered into with its citizens.

E. The Respondents are permanently enjoined from carrying out the provision in HB 267 which removes \$13,700,100 from the KAPT fund and places that money into the General Fund.

F. The Respondents are permanently enjoined from prohibiting the transfer of up to 75% of the abandoned property held by the Commonwealth pursuant to the Escheats Act to the KAPT fund where an administrative body vested with authority to administer the KAPT Fund has determined an unfunded liability exists and such a transfer is necessary to defray the Commonwealth's obligations under KAPT contracts entered into prior to the enactment of HB 267.

In support of this motion the Petitioner has attached and incorporates herein as if repeated verbatim a Memorandum in Support of Summary Judgment and the exhibits thereto.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon the following, by mail, first-class, postage prepaid, on this the ____ day of August, 2005:

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